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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,996	08/06/2003	Bernhard Ritter	028987.52416US	7421

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CROWELL & MORING LLP  
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WASHINGTON, DC 20044-4300

EXAMINER
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PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,996

Applicant(s)

RITTER, BERNHARD

Examiner

Dennis H. Pedder

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-16 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2-16, 18-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The amendment to the claims is indefinite for the following reasons:

“Fastest” and “safest” lack any frame of reference as in faster and safer than what?

Prevention of jamming is also not understood as no jamming is seen from the examples disclosed.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 2-16 and 18-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No disclosure to safety or jamming is found in this application. Applicant apparently has a logic control that skips intermediate positions of the roof covers that are not necessary to the selected final position.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 23, 2-3, 24, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaelzle et al. in view of Weissrich et al. and either Kreiner et al. or Ohtsu et al..

Schmaelzle et al. has first through third roof sections D1, D2, D3, and control unit 19, 20, 27, etc. operable to move same, but lacks the movable operating element, i.e. the switch.

Weissrich et al. teach that moveable roof sections 3,4, 5, all analogous to the sections of Schmaelzle et al., can be moved by a control unit 16, 17 listed in US Patent 5,558, 388 and referenced in column 3 of the Weissrich et al. patent. Weissrich et al. also has a

switch 21 with more than six positions for moving the roof sections as a function of position of the switch.

Both Kreiner et al. and Ohtsu et al. teach the newly claimed controlling movement of the roof section via different sequential movements for different starting roof conditions, the former by using an overflap condition to bring the roof section to closed condition from a lowered position and the latter by skipping the dummy full close, tilt up and flap position in closing from the full open position as schematically illustrated in figure 8.

It would have been obvious to one of ordinary skill to provide in Schmaelzle et al. control unit and switch as taught by Weissrich et al. in order to selectively control the position of the roof sections and different sequential movements as taught by either Kreiner et al. or Ohtsu et al. in order to effectively close the roof.

As to claim 18, the switch is rotary.

As to claim 3, a movable panel coupled to a sun sensor is common knowledge in the art, obvious to use here when the roof sections are transparent to control ambient light in the vehicle interior.

As applicant has not challenged this statement of judicial notice, it is made final.

4. Claims 4, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaelzle et al. in view of Weissrich et al. and either Kreiner et al. or Ohtsu et al. as applied to claims 3, 19 above, and further in view of Odoi et al.

It would have been obvious to one of ordinary skill to provide in the references above a sun blind moveable behind a front edge of the roof opening as taught by Odoi et al. in order to prevent wind damage to the sun blind when the roof section is opened.

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5. Claims 5-8, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaelzle et al. in view of Weissrich et al. and either Kreiner et al. or Ohtsu et al., optionally Odoi et al., as applied to claims 23,2-4, 24 above, and further in view of Henderson III et al..

It would have been obvious to one of ordinary skill to control the wind deflector D1 of Schmaelzle et al. as modified by Weissrich et al. as a function of vehicle speed as taught by Henderson III et al. in order to prevent wind induced noise within the vehicle.

6. Claims 9-16, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaelzle et al. in view of Weissrich et al. and either Kreiner et al. or Ohtsu et al., optionally Odoi et al. and Henderson III et al., as applied to claims 23, 2-8, 24 above, and further in view of Flaherty et al..

It would have been obvious to one of ordinary skill to provide in the references listed above sliding roof sections that can be closed as a function of speed as taught by Flaherty et al. in order to reduce interior wind noise.

***Response to Arguments***

***Response to Arguments***

7. Applicant's arguments filed 1/4/2005 have been fully considered but they are not persuasive. No crush risk is apparently disclosed.

***Conclusion***

8. This is a RCE of applicant's earlier Application No. 10/634996. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

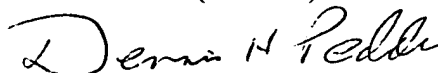
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (703) 308-2178. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dennis H. Pedder  
Primary Examiner  
Art Unit 3612  
2/1/05

DHP  
2/1/2005